



Open Invoice Finance Limited – Terms of Trade

1 INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Brokerage Agreement: any agreement entered by the Supplier with Providers from time to time.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Conditions: these terms and conditions as amended from time to time.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person, firm or company who purchases the Services from the Supplier.

Facility: the offer of a financial facility suitable for the Customer as made known to the Supplier by the Customer essentially in accordance with the Funders Report.

Funders Report: the request by the Customer for the supply of Services, indicating the financial requirements of the Customer.

Providers: the providers of the type of Facility sought by the Customer with to whom the Supplier introduces the Customer.

Services: the introduction of the Customer by the Supplier to Providers in a structured manner with a view to obtaining a Facility for the Customer.

Supplier: Open Invoice Finance Limited (registered in England and Wales with company number 08604631).

1.2 In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to **writing** or **written** includes faxes and e-mails.

2 BASIS OF CONTRACT

2.1 Your signature of our introductory letter incorporating these terms and conditions constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Funders Report shall be deemed concluded when the Supplier gives the Supplier authority to submit the information regarding the Customer to a Provider (or if more than one the first such Provider).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3 SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified by the Customer but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4 OBLIGATIONS OF THE CUSTOMER

4.1 The Customer warrants that:

4.1.1 the information provided in the Funders Report and any information it otherwise provides to the Supplier is complete and accurate;

4.1.2 it shall co-operate with the Supplier in all matters relating to the Services;

4.1.3 it shall provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and warrants that such information is complete and accurate in all material respects;

4.1.4 it shall deal exclusively with the Supplier in respect of the provision of the Services and has not, and will not during this agreement, employ or otherwise work with another supplier of similar services.

4.2 If the performance of the Supplier of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

4.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the performance of the Supplier of any of its obligations;

4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the failure or delay of the Supplier to perform any of its obligations as set out in this clause 4.2; and

4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5 CHARGES AND PAYMENT

5.1 The Charges for the Services shall be:

5.1.1 equal to the rates agreed by the Supplier with the Providers in its Brokerage Agreement with such Providers, from time to time;

5.1.2 paid to the Supplier by the Provider as commission for introducing the Customer to the Provider and, if a Facility is entered into, will be paid to the Supplier by the Provider;

5.2 Should a Facility be offered to the Customer that substantially fulfils the requirements made known to the Supplier in the Funders Report but which is, for any reason, not accepted or otherwise entered into by the Customer or the Provider or should there be a Customer Default then (without prejudice to clause 4.2.2 and 4.2.3 above) the Customer shall discharge the Charges prescribed in clause 5.1.1 and 5.1.2 upon invoice by the Supplier.

5.3 The Customer shall pay each invoice submitted by the Supplier:

5.3.1 within 14 days of the date of the invoice; and

5.3.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the base rate of Barclays Bank Plc from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

5.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

5.7 For any Customer who are sole traders or partnerships, if for any reason a Facility is not entered into you can request a refund of our fee, subject to a £5 deduction. This request must be made within 6 months from the date Terms of Trade are signed.

6 CONFIDENTIALITY AND DATA PROTECTION

Open Invoice Finance is registered under the Data Protection Act 2018 (DPA 1998) and abides by the requirements of the Act and the General Data Protection Regulation (GDPR) and any relevant regulations made thereunder governing the use of personal data. The privacy and confidentiality of data, within the meaning of the GDPR, that is provided by the Customer to the Supplier for the purposes of providing its Services, denotes each of us will be a Data Controller. Both the Customer and the Supplier agrees that it has processed, and will process, the data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments. The Customer agrees that it has a lawful basis for sharing the data with the Supplier. To find out more please refer to our Privacy Policy.

6.1 All information we receive from you is held by us in strict confidence and is used exclusively in order to provide and arrange finance with a Provider. We will not supply your confidential information (personal data) to any person other than potential Provider(s) without your

consent (unless we are required to do so by law, by a court order or in compliance with the rules of the Financial Conduct Authority (FCA).

6.2 You have the right to require us to cease to use the information that you have provided to us (either generally or with respect to any specific piece of such information). However, if this makes it almost impossible for us to provide our Services to you under these Terms of Trade, we will notify you of this and bring our business relationship with you to an end.

6.3 Our selected Provider(s) may make a credit search with a credit reference agency. If you are a company or partnership, the Provider(s) will also make enquiries about the principal director(s) or partner(s) with that credit reference agency.

6.4 All our Customers' records are treated as private and confidential. If you would like sight of your records please contact john@openinvoicefinance.co.uk to make such a request in accordance with our Privacy Policy.

7 LIMITATION OF LIABILITY

7.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

7.2 the total liability of the Supplier to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of the Charges.

7.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

7.4 This clause 7 shall survive termination of the Contract.

8 TERMINATION

8.1 Without limiting its other rights or remedies, either party shall have the right to terminate the Contract by giving the other party one month's written notice.

8.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

8.2.1 the other party commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing to do so;

8.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

8.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

8.2.4 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.2 to clause 8.2.3;

8.2.5 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

8.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 7 days after being notified in writing to do so.

9 CONSEQUENCES OF TERMINATION

9.1 On termination of the Contract for any reason:

9.1.1 the Customer shall immediately pay to the Supplier all of the outstanding unpaid invoices and interest of the Supplier and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

9.1.2 clauses which expressly or by implication survive termination shall continue in full force and effect.

10 GENERAL

10.1 Assignment and other dealings.

10.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

10.1.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

10.2 Notices.

10.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service, commercial courier, fax or e-mail.

10.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.2.1; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

10.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

10.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

10.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

10.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

10.6 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

10.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier

10.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

10.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

10.10 **Complaints.** Our aim is to provide you with a professional and confidential service which delivers the highest possible standards. However, there may be occasions where you feel this has not been achieved and should you wish to make a complaint about any aspect of the service, we provide to you, you can do this by writing to

John Dodsworth
Director
Open Invoice Finance Limited
Glendalough
294 Canterbury Road
Herne
Kent CT6 7HB

or by telephoning us on 020 3701 3806

where we will try to resolve your concern at the earliest time possible.

Where we are unable to do this within 8 weeks, you will be entitled to refer your complaint to the Financial Ombudsman Service who can be contacted at: The Financial Ombudsman Service, Exchange Tower, London E14 9SR. Telephone 0800 023 4567.

As a member of the NACFB you can also write to The Chief Executive
33 Eastcheap
London
EC3M 1DT

A copy of our Dealing With Your Complaint procedures is available on request.